

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

SONY MUSIC ENTERTAINMENT, *et al.*,

Plaintiffs,

v.

COX COMMUNICATIONS, INC. and
COXCOM, LLC,

Defendants.

Case No. 1:18-cv-00950-LO-JFA

**COX'S FAIRNESS DESIGNATIONS AND OBJECTIONS
TO PLAINTIFFS' COUNTER DEPOSITION DESIGNATIONS**

Pursuant to the Court's Order Modifying the Pretrial Schedule entered on July 22, 2019 (ECF 223), Defendants Cox Communications, Inc. and CoxCom, LLC (collectively "Cox") provide the attached objections and fairness designations to Plaintiffs' Counter-Designations to Defendants' Deposition Designations (ECF 428).

Cox's fairness designations reflect deposition testimony which Cox may offer into evidence at trial to the extent Plaintiffs are permitted to offer their counter-designated testimony into evidence at trial. Cox reserves the right to challenge and object on any appropriate grounds to Plaintiffs' use of any counter-designated testimony at trial, including but not limited to any objections as to relevance and admissibility. Cox's specific fairness designations are not intended to waive Cox's right to counter other testimony that Plaintiffs designated or may designate. Certain of Cox's fairness designations apply to multiple counter-designations by Plaintiffs, and an assertion of a fairness designation as to a specific counter-designation by Plaintiffs is not exclusive or exhaustive.

Cox reserves the right to designate portions of the deposition testimony of witnesses

identified on Plaintiffs' trial witness list as "will call" or "may call" witnesses in the event that Plaintiffs do not offer live testimony from any such witnesses. Cox further reserves the right to supplement or amend these fairness designations in light of any testimony inadvertently omitted from the current designations or which comes to Cox's attention after this filing, and for which reasonable notice is given to Plaintiffs. Cox further reserves the right to use deposition testimony without previously designating it for impeachment and to use any deposition testimony that Plaintiffs designate. Cox reserves the right to challenge and object to Plaintiffs' use of any testimony in Cox's fairness designations on any appropriate grounds, and by including testimony in its fairness designations Cox does not waive any objections to the admissibility of any testimony.

Additionally, Cox includes in its current designations testimony that may be subject to: (1) the Court's ruling on Cox's pending motions *in limine*; (2) the Court's rulings on Plaintiffs' and Cox's pending summary judgment and *Daubert* motions; and (3) any further rulings, instructions, or actions by the Court relating to those orders and the underlying motions. Cox therefore reserves the right to amend its counter-designations and objections if appropriate in light of any of the Court's forthcoming rulings.

Cox objects to Plaintiffs' Counter Deposition Designations subject to the following objection codes:

Code	Objection	Rule
ARG	Argumentative	
ASF	Assumes Facts Not in Evidence	
ATT	Attorney Argument; Not Evidence	Fed. R. Evid. 103(c), 602
BEV	Best Evidence	Fed. R. Evid. 1002

Code	Objection	Rule
CP	Compound	
HSY	Hearsay	Fed. R. Evid. 802
HYPO	Incomplete Hypothetical	
INC	Incomplete Document	Fed. R. Evid. 106
IOT	Improper opinion testimony by a lay witness	Fed. R. Evid. 701
LEG	Calls for Legal Conclusion	
LFN	Lacks Foundation	Fed. R. Evid. 602
LPK	Lack of Personal Knowledge	Fed. R. Evid. 602
MIL	Subject to exclusion based on Cox's anticipated motions <i>in limine</i>	
MSC	Mischaracterizes Prior Testimony or Exhibit	
NR	Nonresponsive	
PRJ	Probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, needlessly presenting cumulative evidence	Fed. R. Evid. 403
PRV	Attorney-client privilege, work product, limits on waiver	Fed. R. Evid. 502
REL	Relevance	Fed. R. Evid. 401,402
SCP	Beyond the scope of the witnesses' testimony as a 30(b)(6) designee	
SP	Calls for Speculation	
VA	Vague, Ambiguous, Overbroad, Confusing, Unclear as to time	

Dated: October 22, 2019

Respectfully submitted,

/s/ Thomas M. Buchanan

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CERTIFICATE OF SERVICE

I certify that on October 22, 2019, a copy of the foregoing was filed electronically with the Clerk of Court using the ECF system, which will send notifications to ECF participants.

/s/ Thomas M. Buchanan

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